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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/779,993

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James D. Lewis JR.

HT-5755 DIV

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08/29/2006

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EXAMINER

MOHANDESI, JILA M

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 08/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/779,993

Applicant(s)

LEWIS ET AL.

Examiner

Jila M. Mohandesi

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 22-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 22-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-7 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cruise et al. (6,371,975) in view of Johnston et al. (4,692,361). Cruise '975 discloses that it is desirable to store albumin (at least about 20% albumin) in a flexible bag (146), see Figure 7B embodiment. Cruise '975 does not disclose the specifics of the bag. Johnson '361 discloses a container for holding products to be maintained and removed under sterile conditions, comprising: a flexible polymeric film formed into a bag having a cavity enclosed by a first wall, an opposing second wall, permanent seals about a periphery of the first and second walls, the seals joining an interior portion of the opposing first and second walls and creating a fluid-tight chamber within the cavity of the container and a fitment (see column 6, lines 57-61). See Figures 1 and 2 embodiments and column 1, lines 11-21. Johnson '361 discloses that the flexible containers are utilized in medical industry for containing, inter alia, parenteral solutions, dialysis solutions, frozen drugs and plasma. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the plastic container of Cruise '975 as a bag formed from flexible polymeric film with permanent

seals and with a fitment as taught by Johnson '361 for easier storing and handling of the containers.

With respect to claims 11 and 12, see Figure 1 embodiment and column 3, lines 37-49.

The limitation under Official Notice is now taken as admitted prior art, therefore, with respect to claim 2, it would have been obvious to one of ordinary skill in the art at the time the invention was made in view of the admitted prior art to mix albumin with sterilized water and stabilizers.

3. Claims 8, 13 and 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above references as applied to claims 1 and 3 above, and further in view of Bacehowski et al. (4,910,147). Cruise '975 as modified above discloses all the limitations of the claims except for the flexible bag further comprising an aperture adjacent an edge opposing the fitment. Bacehowski '147 discloses a flexible bag with an aperture adjacent an edge opposing the fitment to facilitate hanging of the flexible bag. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide an aperture adjacent an edge opposing the fitment of the flexible bag of Johnston '361 as taught by Bacehowski '147 to facilitate hanging of the flexible bag.

4. Claims 9-10 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above references as applied to claims 1, 3 and 5 above, and further in view of Bell et al. (4,936,456). Cruise '975 as modified above discloses all the limitations of the claims except for it are silent about the type of seal being used. Bell '456 discloses that

chevron seals can be used instead of linear seals for closing the edges of a flexible bag. As a result of the chevron seal construction, relatively long tabs are formed to facilitate opening through stripping of the gussets from the bag. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide chevron seals in the flexible bag of Johnston '361 as taught by Bell '456 to facilitate opening through stripping of the gussets from the bag.

### ***Response to Arguments***

5. Applicant's arguments filed June 26, 2006 have been fully considered but they are not persuasive.

In response to applicant's argument that the combination of the syringe (60) and the albumin are contained in the container (flexible bag 146) and not just the albumin, the transitional term "comprising" which is synonymous with "including", "containing", or "characterized by", is inclusive or open-ended and does not exclude additional, unrecited elements in the claim. See, e.g., *Genentech, Inc. v. Chiron Corp.*, 112 F.3d 495, 501, 42 USPQ2d 1608, 1613 (Fed. Cir. 1997) ("Comprising" is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still form a construct within the scope of the claim.); *Moleculon Research Corp. v. CBS, Inc.*, 793 F.2d 1261, 229 USPQ 805 (Fed. Cir. 1986); *in re Baxter*, 656 F.2d 679, 686, 210 USPQ 795, 803 (CCPA 1981); *Ex parte Davis*, 80 USPQ 448, 450 (Bd. App. 1948).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections

are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

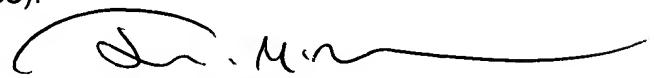
6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jila M. Mohandesi whose telephone number is (571) 272-4558. The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jila M Mohandesi  
Primary Examiner  
Art Unit 3728

JMM  
August 22, 2006